

Criminalizing solidarity: Search and rescue in a neo-colonial sea

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journals.sagepub.com/home/epc**Cetta Mainwaring**

University of Glasgow, UK

Daniela DeBono 

Malmö University, Sweden

Abstract

Non-governmental organizations (NGOs) rescued over 110,000 people in the Central Mediterranean Sea between 2015 and 2017. From 2017, EU member states and agencies increasingly criminalized these organizations, accusing them of ‘colluding with smugglers’ and acting as a pull factor. In this climate, as Italy, Malta and the EU increased cooperation with Libya to stop people from taking to the seas, many suspended their operations. This article explores the search and rescue efforts of NGOs in the Central Mediterranean Sea between 2014 and 2018. We examine the criminalization of this NGO activity and argue that it is made possible through an oscillating neo-colonial imagination of the sea as *mare nostrum* and *mare nullius*, our sea and nobody’s sea, respectively. We build on the work of other scholars who have pointed to the activation of the Mediterranean as ‘empty’ in response to migration flows, erasing the historical connections of colonialism, empire, trade, and exchange in the Mediterranean as well as the contemporary legal geographies that govern the space. Here, we go further to develop the idea of a neo-colonial sea, which is alternately imagined as empty and ‘European’. We explore how NGOs disrupt these depictions, as well as the disappearing figures of the migrant and refugee amidst the contestations between NGOs and states.

Keywords

Solidarity, Mediterranean Sea, migration, neo-colonialism, non-governmental organisations, search and rescue

Corresponding author:

Daniela DeBono, Department of Global Political Studies, Malmö University SE-205 06, Malmö, Sweden.

Email: daniela.debono@mau.se

Introduction

Between 2015 and 2017, non-governmental organizations (NGOs) rescued over 110,000 people in the Central Mediterranean (Guardia Costiera, 2018: 19). From the initial ship launched by the Migrant Offshore Aid Station (MOAS) in late 2014, the ranks of this humanitarian fleet swelled by 2016 to include Cadus/Lifeboat, Jugend Rettet, Médecins Sans Frontières, Mission Lifeline, Proactiva Open Arms, Save the Children, Sea-Eye, Sea-Watch, and SOS Méditerranée.¹ Despite established cooperation with Italy's Maritime Rescue Coordination Centre in Rome, the organizations were increasingly criminalized by Italy, other EU member states, and EU agencies. In 2017, an Italian prosecutor accused the groups of 'colluding with smugglers' (BBC, 2017a), while Frontex (2017: 32) labelled their activities a pull factor. The Italian state seized and impounded the ships of both Jugend Rettet and Proactiva Open Arms in August 2017 and March 2018, respectively. It continues to hold Jugend Rettet's ship and has launched investigations into the crew members from both organizations for 'conspiring with smugglers' (Tondo and Jones, 2018).

The 2018 national election in Italy saw the far-right Lega rise to power in alliance with the anti-establishment Five Star Movement. Italy subsequently refused entry to most NGO ships trying to disembark people they had rescued. Malta followed suit and declared their ports shut to NGO ships, a day after they charged Claus-Peter Reisch, captain of the *Lifeline*, with multiple offences and impounded his ship after he successfully disembarked 234 people. Shortly afterwards, the Maltese government grounded Sea-Watch's spotter plane and refused their ship permission to leave port (Vassallo, 2018). As a result of the criminalization by EU governments, no NGO ships remained operational in July 2018. Moreover, while these organizations were responsible for 40 percent of people rescued in 2017 and up to May 2018, deaths rose sharply after they suspended their operations: at least 721 people drowned in the Central Mediterranean in June and July 2018 (Amnesty International, 2018: 5).² Indeed, in 2018, as NGOs were forced off the sea, the rate of death more than doubled: one person died for every 38 people who arrived in Europe from Libya in 2017, while in 2018, one in 14 people died (UNHCR, 2019).

Since 2018, NGOs have managed to disembark a number of people in Italy and Malta, often only after long standoffs while EU states argue over responsibility. Yet, the criminalization of NGO search and rescue (SAR) activity at sea continues and is part of moves to criminalize acts of solidarity with migrants more generally, in Europe and beyond. Martina Tazzioli (2018) demonstrates how EU states have criminalized these forms of help, such as in the case of the French olive farmer, Cedric Herrou, who helped people to cross the French-Italian border. Similarly, those engaging in rescues at sea, even tangentially, have been accused of smuggling: Greek officials arrested two Danish and three Spanish volunteers in 2016 and charged them with human smuggling. In 2017, Italy launched an investigation into the Italian-based Eritrean priest, Father Mussie Zerai, who was nominated for the Nobel Peace Prize and whose telephone number has been a lifeline for people crossing the Mediterranean over the past 15 years. Helena Maleno Garzón, a Spanish national living in Morocco, has also been under criminal investigation in Spain and Morocco for allegedly 'aiding and abetting illegal immigration' (Fekete et al., 2019: 12–13). Although in most cases charges have been dropped or courts have acquitted defendants, EU states have attempted to deter migrant solidarity work at sea and on land by branding activists as criminals or smugglers, despite the lack of financial exchange involved (Amnesty International, 2020b; Fekete et al., 2019).

In this article, we argue that the criminalization of NGO activity at sea is made possible through an oscillating neo-colonial imagination of the sea as *mare nostrum* and *mare nullius*, *our sea* and *nobody's sea*, respectively. We build on the work of other scholars who have pointed to the activation of the Mediterranean as 'empty' in response to migration flows, erasing the historical connections of colonialism, empire, trade, and exchange in the Mediterranean as well as the contemporary legal geographies that govern the space (e.g. Giuliani, 2016; Heller and Pezzani, 2014; Mainwaring, 2019: 61–72; Stierl, 2016: 564–565). Here, we go further to develop the idea of a neo-colonial sea, which is alternately imagined as empty and 'European'.

Seas have been socially constructed in different and contested ways for millennia: from an extension of land to its antithesis, an empty non-territory (Steinberg, 2001). In the 17th century, Hugo Grotius (1609) defined the high seas as *res communis*, a common space that was unpossessable but in need of stewardship. The principle survives today, and since World War II, states have developed an increasingly detailed legal system to regulate the seas: they have expanded their territorial waters, created exclusive economic zones, and divided the world's oceans into search and rescue zones. Simultaneously, international law has expanded to create intersecting rights and obligations for states and private actors at sea.

Grotius (1609) himself underlined that freedom on the high seas also involved an obligation to obey 'the law of hospitality', which today involves the duty to assist those in distress and allow for their disembarkation in a place of safety. A principle of customary international law that dates back centuries, this duty was also codified in treaty law throughout the latter half of the 20th century, including in the 1974 Convention on Safety of Life at Sea, the 1979 Search and Rescue Convention, and the 1982 United Nations Convention on the Law of the Sea. Paradoxically, this expansion of international law on the high seas has resulted in more sovereign competition, rather than more protection for migrants at sea, a space now characterised by a 'complex web of joint, overlapping and clashing assertions of authority' (Aalberts and Gammeltoft-Hansen, 2014: 445).

We are interested in the ways in which, despite these legal obligations, legacies of imperialism reverberate in the contemporary moment as state and EU actors construct the sea as vast, lawless and ungovernable, yet then reassert control over the space. These erasures and reclamations of the Mediterranean and its histories condemn racialized people to violence and death, while denying freedom of mobility. Such social constructions of the sea contribute to the suppression of particular histories, excluding racialized others from narratives of 'Europe' and 'Europeanness', and reinscribing the Mediterranean Sea as the limit between 'European civilization' and its 'others' (cf. ODwyer, 2018). As De Genova (2018: 1778) notes, 'we must begin to take stock of the multiple, inherently inconsistent and contradictory ways in which "European"-ness itself is (re-)articulated precisely as a racial formation of postcolonial whiteness'.

The social construction of the Mediterranean as an empty space, alongside the associated spectacles of enforcement and humanitarianism, allows the EU and its member states to avoid responsibility for deaths at sea, while framing migration flows as an ahistorical 'crisis' and projecting an image of Europe as a coherent, unified body with an altruistic, civilized core and a hard border (De Genova, 2016; Mainwaring, 2019: 7–13). NGO activity at sea disrupts these constructions to different degrees. By occupying this symbolic border site, they illustrate Europe's complicity in the deaths of thousands of people at its edge, making visible the violence of border controls and contesting their conception as a form of protection (cf. Monforte, 2016: 412–414). The criminalization of NGO activity thus exposes the limits of Europe's humanitarianism and illustrates the persistence of neo-colonial imaginations of the Mediterranean as *mare nostrum*.

After outlining methods and terminology, we turn to our conceptual starting point of the Mediterranean as a neo-colonial space, activated alternately as *mare nullius* and *mare nostrum*. Drawing on Black Mediterranean scholarship, we first re-examine the sea through its colonial history and connect this to the contemporary neo-colonial constructions of the sea as *mare nullius* and *mare nostrum*. We then trace the rise of NGOs in the Central Mediterranean from late 2014 and the ways in which they disrupted this narrative. The next section examines the initial efforts by Italy, Malta and the EU to criminalize these groups in 2017 and 2018. We analyse how social constructions of the sea allowed NGOs to enter this space, as well as enabled their subsequent criminalization. We argue here that by criminalizing NGOs at sea, the EU and its member states reasserted their control over the Mediterranean, claiming it as *mare nostrum*. In the final section, we turn to the disappearing figures of the migrant and refugee amidst the contestations between NGOs and states.

Methods and terminology

We base our analysis on separate qualitative research projects on migration and border control in the Central Mediterranean, which we carried out over the last 15 years and which included extensive interviews with policy makers, NGOs, border guards, and migrants. DeBono (2011; 2013) has studied migration to southern Europe since 2007. Most recently (2015-2019), she conducted a four-year, multi-sited ethnographic study of first reception of boat migrants and borderwork in Lampedusa, Malta and Sicily (DeBono, 2019a; 2019b), which included a focus on SAR activities in the Central Mediterranean, disembarkation ports and first reception migrant centres.

Mainwaring (2012; 2016; 2019) has studied migration across the Mediterranean since 2005. From 2007 to 2017, she conducted extensive fieldwork in Malta in particular, examining migrant journeys to this southern European island, as well as Maltese and EU responses to migration (Mainwaring, 2019). The fieldwork included interviews with migrants, policymakers, border guards, detention and open centre staff, fishermen and NGO representatives. Mainwaring also conducted participant observation in migrant centres. She continues to conduct interviews and participant observation in Malta, with people engaged in migration practices and policies, including with SAR NGO activists.

In our work, we use the term ‘migrant’ as a broad umbrella for the people moving across the Mediterranean space and seeking a better life in Europe. Many of these people will apply for asylum. Some will receive some form of refugee status. Here, we try and avoid replicating the bureaucratic, violent language of states that reduces people to ‘asylum seekers’ or ‘irregular migrants’. This language filters people into hierarchical categories of deservingness, while simultaneously obscuring the power-laden, historically contingent mechanisms that categorise people and their behaviour. Indeed, where possible we speak of these people not as ‘migrants’ (another state category) but as people, on the move, with families, dreams, and agency.

Re-Imagining *mare nostrum*: Colonial echoes across the Black Mediterranean

Throughout the 19th century, Britain and France colonized different parts of the Mediterranean, establishing their empires and in doing so inventing the concept of the Mediterranean as ‘a geographically united, historically unique and essentially European space’ (Borutta and Gekas, 2012: 4). Spain and Italy, among other European powers,

joined ‘the scramble for North Africa’ in the 20th century, drawing on the *mare nostrum* discourse of the Roman Empire to legitimise their violent exploits. These powers constructed the sea not as a divide but as a space connecting metropolis and colony (Borutta and Gekas, 2012: 2–4).

Characterising the sea as the ‘Black Mediterranean’, scholars have recently sought to unearth these histories and connections, including Europe’s complicity in slavery, highlighting in particular how the Mediterranean slave trade paved the way for the transatlantic slave trade (e.g. Danewid, 2017; Hawthorne, 2017; Smythe, 2018). They return to the work of Cedric Robinson (2000) who argues that the Black Mediterranean was a precondition for the Black Atlantic, and that its purging from European history constructs Europe as a ‘racially discrete entity’ (quoted in introduction by Robin DG Kelley, p. xiv).

Scholarship on the Black Mediterranean demands that we acknowledge the connection between the present and past, between histories of colonialism and present-day migration among other things. For instance, European nationhood is shaped by the continent’s imperial histories, which saw European states colonize and subjugate, before retreating and restricting the movement of people from those former colonies (Davies & Isakjee, 2019: 215; Danewid, 2017). Restrictions on movement were achieved through immigration policies established on the basis of the color of those who moved. Indeed, colonial violence can be traced into the present through immigration controls (Bhambra, 2017: 401; cf. El-Enany, 2020) and, as Mbembe (2003: 17) argues, ‘race has been the ever present shadow in Western political thought and practice, especially when it comes to imagining the inhumanity of, or rule over, foreign peoples’.

The contemporary struggles over mobility in the Mediterranean can thus be understood as byproducts of ‘the ruins of empire’, global inequality, military interventions, and capitalism (Davies & Isakjee, 2019: 215; Stoler, 2013: 13). The majority of those who cross the sea to seek asylum come from countries that were until recently under colonial rule. Moreover, as Camilla Hawthorne (2017: 166) reminds us, ‘the black Mediterranean is no longer just a precondition for modern racial capitalism; it is being reproduced every day at the nexus of anti-black violence (seen in immigration policy, citizenship law, and everyday racism) and black liberation struggles across the Mediterranean basin.’

Today, people regularly cross the Mediterranean, one of the world’s busiest and most monitored seas, a sea bustling with cargo, cruise liners and naval war ships. Yet, EU states continue to script the sea as a neo-colonial space, oscillating between depictions of it as *mare nostrum* and *mare nullius*. Thus, they erase these histories and their responsibilities. For example, the Italian government launched Operation Mare Nostrum in October 2013. The year-long ‘military humanitarian’ operation saved over 150,000 people and revived the imperial Roman name *mare nostrum* or ‘our sea’, which was also a rallying cry at the height of Italian nationalism during the period of unification and during the era of fascism. At both these times, it was an explicit call to territorial expansion and ‘reclamation’ of former colonies (Smythe, 2018: 5). Echoing this history, Operation Mare Nostrum projected Italian power across the Central Mediterranean in the 21st century and included patrols near the Libyan coast.

Similarly, at the regional level, Alun Jones (2011: 41) has argued that European policy elites imagine the Mediterranean region as Europe’s back yard, ‘as [a] fragmented, problematic, and often conflictual space; a space in which the European Union regards itself as having a natural legitimacy to act in order to ensure its own security...’ Thus, when Italy ended its Mare Nostrum Operation, EU Commissioner Malmström welcomed its replacement, Frontex’s Operation Triton, stating: ‘The Mediterranean is a European sea and a European responsibility’ (EU Commission, 2014). The so-called ‘migration crisis’ in 2015

reinforced this imaginary, working to construct the Mediterranean as ‘a space of action by specific “response-able”—read European—actors’ (Pallister-Wilkins, 2016: 313; cf. Van Reekum, 2016).

We are interested in how the colonial trope continues in instances when the sea is activated as nobody’s sea in order to shift responsibility for rescue. We thus use the idea of *mare nullius*³ as a mirror to *terra nullius*, a ‘legal fiction’ and colonial justification of the land as wilderness, a space that is neither possessed nor acted upon by humans (Fitzmaurice, 2007; Hendlin, 2014; Pannell, 1996). Throughout much of the 21st century, Italy and Malta have activated the Mediterranean as *mare nullius*—empty, vast, and lawless—in their disputes over responsibility for people in distress.

Despite the development of an increasingly detailed legal system to regulate the seas since World War II and the long-standing legal duty to rescue those in distress, international law remains ambiguous on disembarkation. Malta maintains that boats rescued within its SAR area should be disembarked at the nearest safe harbour, often the Italian island of Lampedusa. Italy, however, maintains that disembarkation should occur in the state responsible for the SAR area (i.e. Malta). The states have exploited the legal loophole that allows them to maintain these contradictory positions in order to limit their SAR activities and shift blame when deaths inevitably result (cf. Fink and Gombeer, 2018; Klepp, 2011). In late 2013, as Italy embarked on its Mare Nostrum Operation in the wake of hundreds of deaths at sea, there was a hiatus in this conflict. Italy struck a secret deal with Malta and agreed to rescue people throughout the Central Mediterranean and disembark them. However, by 2017, the informal agreement between the two countries was unravelling as the Italian coastguard operations chief lambasted Malta for limiting its search and rescue operations and denying requests for disembarkation (ANSA, 2017).

In Malta, much of the political discourse has revolved around Malta’s small size relative to its large SAR zone, the perceived differences between bordering land and the sea, and the perceived ‘burden’ that Malta thus faces (Mainwaring, 2019: 65–72). Framing its SAR zone as exceptionally vast in relation to the island state’s size enables blame to be shifted when migrants die at sea: to Libya for ‘allowing’ their departure, to the EU for their lack of ‘solidarity’, and even to the voyagers themselves for taking to the sea. Nevertheless, Malta has consistently rebuffed suggestions that it should relinquish parts of its SAR region, which coincides with its highly profitable Flight Information Area. In this way, it reasserts ownership over the space. Prime Minister Joseph Muscat (2017) also echoed the EU’s *mare nostrum* rhetoric at the end of Malta’s EU presidency in 2017, saying, ‘*Our seas* should be a force to unite the world. Our vision for the world must be to build bridges, not walls’ (emphasis added).

Similarly, in Italy, the lament for many years has been the undue burden the EU places on the country in terms of SAR activities and asylum processing (e.g. Ministero dell’Interno, 2014). Politicians have pointed, for example, to the fact that the country spent €9 million every month on its Mare Nostrum Operation. Yet, the country has also been interested in asserting its power over the Mediterranean space, branding itself as ‘the Mediterranean state par excellence’ (Ben-Yehoyoda, 2011: 387). Indeed, the EU’s renewed focus on controlling border crossings across the Mediterranean in the last decade re-ignited Italy’s interest in the sea and region, especially its desire to position itself as a key partner in its management (cf. Italian Ministry of Foreign Affairs and International Cooperation, 2017: 3–5). For example, when the EU finally launched Operation Triton, although it was a much smaller operation than Mare Nostrum, Italian Minister Angelino Alfano presented it jubilantly as an Italian achievement: ‘L’Europa per la prima volta scende in mare, e sarà a presidio delle frontiere/

For the first time, Europe takes to the sea, and will be guarding the borders' (Ministero dell'Interno, 2014).

In line with EU policy, Italy and Malta have responded to deaths at sea with calls for strengthening borders and externalizing controls to Libya, in effect reducing the Mediterranean to a dividing line and erasing the struggles over mobility occurring there. Even after one of the deadliest shipwrecks in October 2013 and admission by the EU Council (2013) that 'actions...are needed to avoid such tragedies', the response focused on strengthening border control, rather than rescue at sea. Unlike Operation Mare Nostrum which included patrols throughout the Central Mediterranean and was the largest state SAR effort seen in the Mediterranean to date, its replacement, Operation Triton, was smaller by design because of unsubstantiated accusations by Frontex and others that Mare Nostrum had acted as a pull factor (Frontex, 2014). Triton was initially limited to operating only 30 nautical miles from the Italian and Maltese coasts and did not involve ongoing patrols but rather responded to distress calls (Heller and Pezzani, 2016).

Italy and Malta have also long held that the answer to deaths at sea is strengthening border controls in Libya. In the wake of the Libyan civil war and NATO intervention, Italy and the EU financially supported Libya's establishment of a Maritime Coordination Centre and SAR area in 2017, despite a chorus of criticism of Libya's coastguard and its inability to provide robust search and rescue (Human Rights Watch, 2018). Indeed, since 2015, Italy and the EU have provided Libya with money and training for detention centres and its coastguard, and generally feted the coastguard as an EU partner, despite evidence that it cooperates with smugglers and is involved in torture and other inhumane and degrading treatment (EU Council, 2018). The EU's cooperation with Libya has also been condemned for contravening the principle of *non-refoulement* in particular when it results in refugees being forcibly returned to Libya, which is not a signatory to the Refugee Convention. Nevertheless, Italy extended its Memorandum of Understanding with Libya in February 2020, a move condemned by Amnesty International (2020a) who stated, 'Under the deal, Italy helps Libyan maritime authorities to stop boats at sea and return people to detention centres in Libya where they are unlawfully detained and face serious abuse, including rape and torture'. A secret deal between Malta and Libya to similarly facilitate interception and the return of migrant boats was revealed a few weeks later (Sansone, 2020).

At the EU level, Frontex has also focused on externalizing border controls, thus erasing the sea and the daily contestations taking place there. For instance, in Frontex's (2019: 38) annual report on 2018, there is no mention of the sea or the NGO ships present, while the Libyan coast guards' 'uptick in activities' is mentioned as a key factor in preventing departures. The NGO presence at sea is only mentioned in the 2016 report as a 'pull factor' (Frontex, 2017). The following year, the report describes 'search and rescue operations covering *vast areas* of the Mediterranean Sea' (Frontex, 2018: 9, emphasis added).

This social construction of the Mediterranean as nobody's sea, *mare nullius*, allows the EU and its member states to easily shift blame for deaths at sea. The many thousands of people dying at the edge of the EU are labelled a 'tragedy' and explained with reference to natural elements like the wind and waves, or human intervention like smugglers and NGOs. Migrants themselves are often depicted as irrational for taking unfathomable risks in crossing the sea or moving too quickly to one side of their boat when a rescue vessel approaches (e.g. Loveluck and Phillip, 2015; Renzi, 2015; Schulz, 2014). Erased are the ways in which EU policies and practices encourage the dangerous journeys people make across the Mediterranean, and thus deaths at sea, by closing off legal channels and externalizing border controls (Heller and Pezzani, 2017; Mainwaring, 2019). In the next section, we turn to how NGOs entered and disrupted this space in late 2014.

Solidarity in the Mediterranean

The Catrambones, an American-Italian millionaire couple based in Malta, founded the Migrant Offshore Aid Station (MOAS) in 2013. The following year, MOAS chartered a ship, the *MY Phoenix*, and thus became the first non-governmental organization dedicated to search and rescue in the Mediterranean. By 2016, the ranks of this burgeoning humanitarian fleet had grown to include Jugend Rettet, Proactiva Open Arms, Save the Children, Sea-Eye, Sea-Watch, and SOS Méditerranée. The NGOs represented both established organizations, like MSF and Save the Children, as well as smaller organizations, like Sea-Watch, founded by four German families expressly for the purpose of search and rescue in the Mediterranean (Cusumano, 2017a; Stierl, 2018).

MOAS's initial mission in 2014 and the subsequent proliferation of NGO ships at sea took place as Italy ended its year-long 'humanitarian-military' operation, Mare Nostrum. As was predicted, the smaller Frontex operation that replaced it resulted in more deaths at sea. It also relocated the burden of rescue: in the first half of 2015, commercial ships were responsible for 33 percent of rescues (Cuttitta, 2018: 638). In the face of increasing deaths and sustained criticism, the EU expanded Operation Triton and launched a naval mission, Sophia, with the aim of disrupting smuggling networks and thus stemming departures from Libya. At the same time, the number of NGOs at sea increased. As a result, during the second half of 2015, commercial ships were responsible for only 10 percent of rescues in the Central Mediterranean and one percent across the entire Mediterranean (Cuttitta, 2018: 638–639; Tgcom24, 2018).

Both implicitly and explicitly, NGO activity at sea shed light on the limited number of EU forces deployed under Frontex's Triton operation and the EU's naval mission. They constituted an important new form of monitoring on the high seas, where oversight of government activity had previously been limited to migrant accounts, readily dismissed by policymakers. By demonstrating that even small groups of private citizens could make a significant difference in search and rescue, some NGOs sought to shame Europe and to reveal how EU missions had limited operational capacity by design. To different degrees, the groups pointed to the EU's complicity in deaths at sea and how their migration policies encouraged dangerous voyages and smuggling.

Indeed, as Stierl (2018) has argued, the activities of these different NGOs both challenge and reproduce the EU's border practices and discourse. The organizations hold 'divergent imaginaries and discursive framings of what is at stake in the maritime borderzone and of how they understand their own interventions' (Stierl, 2018: 715). Some, like MOAS are firmly embedded in a humanitarian business model and as such have been complicit in framing the 'problem' as merely a lack of EU resources, compounded by unscrupulous smugglers. The group framed the outsourcing of humanitarian rescue to private entities as a technical solution to deaths at sea, a logic that also runs through their for-profit work with military contractors. Their focus on the corporeal rescue of people at sea, with little concern for the violence of detention and deportation that awaits many of them in the EU, reproduces a 'limited and limiting notion of humanity' (Ticktin, 2006: 42; cf. Pallister-Wilkins, 2017; Stierl, 2018: 715–717).

In contrast, other organizations, especially smaller groups like Sea-Watch and Jugend Rettet, have framed deaths as a product of EU policies and practices that close off legal avenues. Exposing and denouncing the violence of the European border regime is thus integral to their work, with some explicitly connecting to wider freedom of movement struggles. Rather than acting to patch up Europe's border practices, they operate in the Mediterranean to conduct rescue but also to monitor and hold EU forces accountable

(Cuttitta, 2018; Stierl, 2018: 718–719). Although not physically present at sea, the Watch the Med Alarm Phone runs a hotline for people in distress and has assisted over 2,700 boats (Alarm Phone, 2019). Initiated in 2014, the network thus similarly works to assist people at sea while also playing a key monitoring role, informing coastguards of boats in distress and applying pressure when rescue is not forthcoming (cf. Stierl, 2016). Indeed, even when NGO boats are unable to operate at sea, the Alarm Phone continues their work, making cases of distress at sea visible and applying pressure on states to rescue and disembark. In recent years, as the relationship between these states and the NGO ships at sea has deteriorated, the Alarm Phone has been a crucial source of information for NGOs, providing details for instance of distress cases at sea.

Regardless of their motivations and politics, the effectiveness of this humanitarian fleet was evident by the end of 2016: that year, NGOs were involved in over 20 percent of search and rescue operations in the Central Mediterranean (EU Commission, 2017a: 4). During this time, NGOs cooperated closely with the Italian authorities, including Rome's Maritime Rescue Coordination Centre (MRCC) responsible for coordinating rescue, and the Ministry of Transport responsible for giving permission to dock and disembark.

Criminalizing solidarity at sea

Yet by the end of 2016, the political atmosphere had turned decidedly against these group and their activities were increasingly delegitimized and criminalized. Frontex (2017: 32) characterized NGO activities as a 'pull factor' that encouraged people to cross and risk drowning in the Mediterranean Sea. In Italy, the groups also came under attack. The chief prosecutor of Catania accused them of 'colluding with smugglers' to destabilize the Italian economy. Salvini, the leader of the far-right Lega, called for their ships to be destroyed and employees arrested, while the Five Star Movement branded them a migrant 'taxi service' (Momigliano, 2017; cf. Cuttitta, 2018). By May 2017, courts in Palermo and Trapani were investigating crew members. The NGOs vehemently denied the accusations of collusion and researchers pointed to a lack of evidence to substantiate such claims (e.g. Heller and Pezzani, 2017).

Nevertheless, the atmosphere only intensified over the next few months. In July 2017, Italy threatened to close its ports to NGO ships (BBC, 2017a). It then drafted a 'Code of Conduct' that it insisted all rescue NGOs should sign. While MOAS, Proactiva, and Save the Children complied, the majority of NGOs refused, including MSF, Jugend Rettet, Sea-Watch, Sea-Eye, and SOS Méditerranée (Reuters, 2017). These groups criticized the Code for replicating many of the international obligations they already adhered to, as well as introducing two new provisions that would undermine their operations. First, the Code required a police officer on all NGO ships 'for information and evidence gathering with a view to conducting investigations related to migrant smuggling and/or trafficking in human beings' (Italian Ministry of Interior, 2017). Second, it prohibited the transfer of rescued people between ships at sea, effectively limiting the operations of smaller, often more critical NGOs, like Sea-Watch, that regularly transferred people onto larger ships before continuing their rescue work (Cusumano, 2017b).

On August 1st, 2017, Italy seized and impounded Jugend Rettet's ship, *Iuventa*, one day after the group refused to sign the Code of Conduct. The Italians accused the German NGO of having contact with Libyan smugglers and using the ship 'to aid and abet illegal immigration' (Dearden, 2017). A week later, Italy and Malta refused Proactiva's ship permission to disembark three Libyans rescued under the direction of Malta's Coordination Centre (ANSAMed, 2017). That month, the Libyan government in Tripoli formerly established a

SAR area, with Italian support, and threatened to fire on NGO ships sailing too near its coastline. In mid-August, a Libyan vessel intercepted Proactiva's ship and ordered it to sail to Tripoli or risk being fired upon (BBC, 2017b). Libyan coastguard officials also approached MSF's *Bourbon Argos*, fired several bullets and then boarded and searched the vessel. In early September, Libyan coastguards seized Sea-Eye's speedboat, forcing it and the two crew members to dock in Tripoli (Cuttitta, 2018: 647–648).

In this climate, MSF suspended their operation in the Mediterranean, tweeting 'We refuse to be co-opted into a system that blocks people from seeking safety and protection.'⁴ Other groups followed. MOAS suspended their operation in September, releasing one of their most overtly political statements: 'MOAS does not want to become part of a mechanism where there is no guarantee of safe harbor or welcome for those being assisted and rescued at sea' (MaltaToday, 2017). Save the Children also suspended their mission after Italian police searched their ship, as part of wider investigations into NGO activity at sea. The organization's Director General condemned EU policies, saying 'For too long we have been the substitution for the inexistent and inadequate European policies for search and rescue and for hosting migrants' (Scherer, 2017).

Italy and Malta have adopted various tactics to prevent NGO ships from carrying out rescue: Malta used relatively minor procedural issues, such as raising questions about vessel registration. Although NGOs maintain that they are operating within the law, and that such state actions are politically motivated, challenging governments involves long-winded legal procedures, which would see them out of action for long periods. In this way, Maltese Prime Minister Muscat tried to walk a fine line between maintaining a humanitarian image and criminalizing NGOs. On the other hand, Italy resorted to much bolder political moves, adopting explicit rhetoric that painted NGOs as criminals and shutting their ports to any ship carrying migrants.

Obstructing the work of SAR NGOs is not only demoralising for organizations run primarily on volunteer labor, it also jeopardizes their funding as they rely on donations generated by their activities (cf. Cusumano, 2017a: 96). Indeed, by 2018, the attacks on NGO activities had the desired effect. Only three groups remained at sea in March: Sea-Eye's *Seefuchs*, the *Aquarius* operated by SOS Méditerranée, and *Sea Watch 3* (ANSA, 2018). The national election in Italy that month turned the tide even further. The new government, formed between the far-right Lega and the anti-establishment Five Star Movement, upped the ante against NGOs operating at sea and ultimately closed their ports to them in June 2018.

The criminalization of humanitarian work is not a new phenomenon, nor limited to solidarity activities in the Mediterranean Sea.⁵ Nevertheless, the criminalization of NGOs at sea comes at a crucial time for the EU. The rise of the far right has been well documented across the continent and migration has become a flashpoint for the struggle over Europe (De Genova, 2016). The criminalization of NGOs also began as Italy and the EU intensified their efforts to externalize migration controls to Libya in 2017 (Tazzioli, 2018: 5). Despite the ebb and flow of migrant arrivals, European leaders continue to prioritize the externalization of EU borders to Libya and elsewhere, using the same rhetoric of 'saving lives' to justify attempts to close routes across the Mediterranean as well as out of some of the world's poorest countries (Howden and Zandonini, 2018; Moreno-Lax, 2018). Cooperation with Libya has increased, despite the chorus of criticism pointing to the severe human rights abuses occurring in the country. In this geopolitical context, NGOs are constructed as enemies as they act as critical monitoring forces, revealing the EU's politics of neglect that causes deaths at sea and the Libyan coastguard's violence against migrants and NGOs. The next section examines how the construction of the sea as antithetical to land and as an empty space,

both allowed for NGOs to enter the space as well as for their subsequent criminalization. We argue that by criminalizing NGO presence at sea, states and the EU reasserted their control over the Mediterranean, claiming it as *mare nostrum*.

From *mare nullius* to *mare nostrum*

Despite clear legal obligations to rescue, and the fact that the sea is ‘a key site where borders and border enforcement are proliferating’ (Mountz and Hiemstra, 2012: 455), when it comes to migrant vessels, the Mediterranean Sea is often presented as empty of these regulations by states. Indeed, the Sea is imagined as an empty space where states hold little responsibility and migrants only contend with the physical elements of the sea, their own physical bodies, and smugglers as legal geographies and actors at sea—EU forces, commercial vessels, etc.—are erased (Stierl, 2016). As William Walters (2008: 5) observes:

[H]owever much the ocean may have been striated by the modern forces of commerce, geopolitics and international law, however much it has been rendered predictable, navigable, exploitable, etc. by these interventions, there exist circumstances under which the ancient idea of the high sea as a lawless space beyond sovereignty and justice is capable of being reactivated.

NGOs entered this imagined and carefully crafted void from late 2014. By deploying vessels, they filled the space and reminded the public, both directly and indirectly, of the relative ease of conducting more robust SAR missions. Some, like Sea-Watch, were explicit in their condemnation of the EU and its complicity in migrant deaths. Such groups provided an important counter narrative to the government discourse that constructed the sea as *mare nullius*. Although migrants had long disputed government narratives of the sea as empty, pointing to for instance the many ships that did not respond to their distress signals and the deadly delay tactics used by Italian and Maltese officials to avoid rescue (Gatti, 2017; Mainwaring, 2016), the NGOs at sea were less easy to dismiss.

Despite challenging sovereign narratives to different degrees, these organizations nevertheless began their operations with relative ease and operated in close cooperation with the Italian Maritime Rescue Coordination Centre between 2014 and 2016. Indeed, even as they came under increasing attack from political elites, they continued to cooperate with the MRCC in order to carry out rescue. Their entry into the Mediterranean space in late 2014 can be explained in a number of ways. Crucially, Italy’s decision at the end of 2013 to reverse its policy of refusing disembarkation of people rescued in Malta’s SAR area allowed NGOs to operate knowing they could disembark in Italy (Cusumano, 2017a: 94). MOAS, the first organization to charter a ship, was also one of the least politically problematic organizations for the EU and its member states. They framed their activities as apolitical and ‘purely’ humanitarian (Cuttitta, 2018: 640), a way for governments to outsource a service, avoiding any implication that the EU was complicit in deaths at sea. For example, before setting sail in 2015, MOAS (2015) stated, ‘We must take politics out of search and rescue. We must put saving lives at the top of the agenda’. They also established close cooperation with governments in Malta and Italy. MOAS’s presence at sea opened the door for much more critical groups, like Sea-Watch and Sea-Eye. NGOs’ willingness to share information and operational practices also facilitated access to this space and allowed for a process of emulation (Cusumano, 2017a: 96–97). Regardless of how critical the groups were, their efforts as humanitarians also aligned with the EU’s discourse, if not its practice, as we discuss further below.

The construction of this sea as antithetical to land, alongside the principle of free movement, also aided NGO entry into the Mediterranean space. Because the sea is constructed, legally and socially, as different to territory and territorial waters, control of actors is more limited: vessels may pass through areas outside territorial waters unheeded. The subsequent criminalization of NGOs was also possible due to the narrow, politicized frame of humanitarianism in the EU and the continued construction of the Mediterranean as *mare nullius*, the erasure of the historical connections of colonialism, empire, trade, and exchange in the Mediterranean as well as of contemporary legal geographies. Indeed, NGOs are a constant reminder of the international laws that govern this space and thus a challenge to the social construction of the Mediterranean as *mare nullius*. Their presence allows them to bear witness in an area rife with trade, military, leisure and other activity. Armed with this knowledge and their first-hand experience, they challenge state narratives, using mass and social media in order to keep the spotlight on the Mediterranean.

As Italy, Malta and the EU moved towards a partnership with the Libyan coastguard in their efforts to externalize migration controls, they increasingly associated NGOs with smugglers and deaths at sea while framing their own externalization practices as humanitarian measures to save lives (cf. Moreno-Lax, 2018). The partnership with Libya included the establishment of the country's SAR zone in 2017, similarly framed as a humanitarian measure as well as a reflection of Libyan sovereignty, despite widespread criticism that, due to the Libyan coastguard's limited capacity and human rights record, the Libyan SAR zone was a legal fiction (Maccanico, 2020; Müller & Slominski, 2020). Indeed, the neo-colonial interests in controlling migration through 'refoulement by proxy' were made clear by Admiral Enrico Credendino, commander for operation Sophia, in 2017:

We will create a Libyan system capable of stopping migrants before they reach international waters, as a result it will no longer be considered a push-back because it will be the Libyans who will be rescuing the migrants and doing whatever they consider appropriate with the migrants (emphasis added, quoted in Liguori, 2019: 12).

In this way, states reclaimed the Mediterranean as their sea. The Italian national election in 2018 resulted in increased state attacks against NGOs at sea. In mid-July 2018, there were no NGOs operating in the Central Mediterranean and over 600 people had drowned during the previous month—half of all deaths in 2018 (ECRE, 2018).⁶ As Stierl (2018: 5) has argued, 'Europe's humanitarian generosity extends, if at all, merely temporarily to migrant bodies within some parts of the sea—those beyond this delimited zone become subjected to registers of deterrence, policing, and expulsion.'

The disappearing figure: Migrants and refugees in a neo-colonial sea

In this section, we examine the figures of the migrant and refugee within the construction of a neo-colonial sea. Although NGOs challenge state characterizations of the sea as *mare nullius* and *mare nostrum*, their solidarity work is circumscribed by the space they operate within, the power dynamics that dominate that space, and their reliance on donations. Despite their efforts to resist the pitfalls of humanitarianism and their commitment to what Dadusc and Mudu (2020) call 'autonomous migrant solidarity', they also risk reproducing colonial, racialized tropes of the saviour and the saved, as well as the sea as humanitarian zone and European space for intervention (DeBono & Mainwaring, 2020; Pallister-Wilkins, 2017; Van Reekum, 2016). In these humanitarian narratives, the figure of the refugee, with her associated human rights, slides from view as the saving of bodies from

the sea takes centre stage. The figure of the migrant is intermittently activated in order to delegitimize mobility across the sea and justify externalization of migration controls. The criminalization of NGO activity has further displaced the figure of the refugee, as states home in on NGOs as part of their 'fight' against smugglers (Tazzioli, 2018: 6–8).

Perkowski (2016) has argued that the movement of people across the Mediterranean reanimated the Sea as a political space, defying the security and humanitarian logics of the European border regime. By 'reasserting their agency, their wishes and hopes, political and social identities', migrants proved to be the biggest challenge to European migration governance (Perkowski, 2016: 333–334). In the face of this agency, a particular figure of the migrant is necessary in order to continue to depict Europe as savior and protector, and NGOs as criminals abetting human smugglers and contributing to migrant deaths by encouraging the crossing. The figure of the migrant is thus distorted and reduced to that of a victim and an 'other' (cf. Schweppe & Sharma, 2015).

Cuttitta (2015: 138) has similarly analyzed how migrants are framed as 'inferiorized subjects' and located a humanitarian turn in the Lampedusa shipwreck in October 2013, which he argues brought about a discursive shift from boat migrants being 'intercepted' or 'apprehended' to being 'rescued'. This is echoed in the 2015 European Agenda on Migration, which, despite its focus on increased border enforcement, the externalisation of border controls, and increased migrant returns, also avows 'to avert further loss of life' and 'to halt the human misery', calling for 'swift and determined action in response to the human tragedy in... the Mediterranean' (EU Commission, 2015: 2–3). Cuttitta argues that although this appears to make the border more humane, what is instead taking place is a re-evaluation of human life. He captures the paradox by asking:

But why is the human life of a migrant person only recognised as valuable after it has been devalued by restrictive border policies? Why do migrants deserve sympathy only when they die or risk their lives? Why are the dead—if only in words—granted Italian citizenship, while their surviving travel mates are investigated for illegal immigration? (Cuttitta, 2015: 132)

NGOs at sea play an important role in this 're-evaluation' of human life by contributing to and challenging the humanitarian narrative constructed by states. Indeed, between 2015 and 2018, the 'refugee crisis' was often dominated not by discussions about migration but by discussions and images of humanitarian practices, including the rescue work of coastguards, NGOs, and others. The Mediterranean 'crisis' gave rise to the figure of the rescuer, an image constructed and fuelled by states and NGOs, albeit with different intentions and to different degrees, through media images of rescue, often depicting white Europeans pulling black people out of the sea. The focus on the rescuers ignores European policies that encourage people to make long and dangerous journeys, and the increasing militarisation and externalisation of EU borders. It also reproduces neo-colonial stereotypes of irrational black/brown people needing to be rescued by organised white Europeans. Crucially, it shifts the focus away from the people making these journeys.

Even within a humanitarian framework, migrant life is devalued. Migrants are reduced to humanitarian subjects, helpless victims in need of rescue from ruthless smugglers, the physical elements at sea, ultimately from death. In this way, capture by the Libyan coastguard can be framed as 'rescue'. This dynamic was evident from 2017 with the criminalization of NGOs. In reclaiming the sea as *mare nostrum*, states once again evoked a language of humanitarianism and protection in order to justify violent externalization practices to Libya and elsewhere. Moreover, as the EU and its member states were intensifying attacks on NGOs, they were simultaneously undermining the legitimacy of those who travel across

the sea, characterizing them as ‘economic migrants’ rather than refugees (e.g. EU Commission, 2017b). For example, in 2017, EU Council President Donald Tusk wrote to all EU heads of state asking for financial contributions to help train and equip the Libyan coastguard. In the letter, he emphasised the increase in ‘illegal arrivals’ in Italy. When questioned, he reiterated, ‘In most of the cases... we’re talking clearly and manifestly about economic migrants. They get to Europe illegally, they do not have any documents which would allow them to enter the European soil’ (Gutteridge, 2017). Another ‘inferiorized subject’, the figure of the migrant thus justifies deterrence and externalization.

Conclusion

Through their actions and words, NGOs have insisted on the primacy of the right to life and to mobility. In so doing, they re-assert the importance of the international law of the sea. Their criminalization by states exposes the extent to which this is in sharp contrast with European border policies, and how the oscillating constructions of the sea as *mare nullius* and *mare nostrum* are key to the development of European migration and border externalisation policies. Indeed, though paradoxical at first glance, *mare nostrum* and *mare nullius* reinforce each other in evoking a neo-colonial sea, a space claimed by states as theirs to control and theirs to empty. Threats to this narrative must be quickly removed.

The criminalization of NGO activity has shrunk the humanitarian fleet, as Italy, Malta, and the EU turn to containing people in Libya, despite the instability and widespread violence in the country. In 2019, over 9,000 people were intercepted at sea and returned to Libya. With fewer search and rescue operations, at least 1,262 people died trying to make the journey (Amnesty International, 2020c: 17). Notwithstanding this, NGOs’ solidarity work in the Mediterranean contributes to an important alternative imaginary of the sea. Despite their criminalization and attempts by states and the EU to reclaim the Mediterranean as *mare nostrum*, the Sea remains a contested space. Since 2018, NGOs have persisted with rescue operations and developed new strategies in the face of continued criminalization. It is now common practice for Italy and Malta to deny entry to NGOs, leaving crew and passengers stranded at sea for weeks in many instances. Disembarkation is permitted only after lengthy and ad-hoc negotiations between member states secure the promise of resettlement of rescued passengers. Moreover, captains, like Carola Rackete, have been arrested and boats seized when disembarkation does eventually occur. In 2020, Italy and Malta exploited the Covid pandemic to once again shut their ports to migrants and NGO ships. NGOs have thus had to fight for their right to conduct rescue missions through the courts and in the press.

Facing closed ports in Italy and Malta, rescue NGOs also joined forces with civil society, activists, and representatives of European municipalities to call for safe harbours, sanctuary cities, and the right to mobility. For instance, in the 2018 Palermo Charter Process, they bridge contestations at sea with struggles that continue within Europe, in order to ‘prefigure and enact our vision of a society, in which we want to live’ (Alarm Phone 2018). Moreover, despite the militarization of the Mediterranean and the criminalization of NGOs at sea, people continue to journey across the sea, with thousands arriving ‘autonomously’ without the need for rescue. Thus, the Sea remains a contested space, where solidarity work produces new imaginaries and people insist on the right to life and the right to move.

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ORCID iD

Daniela DeBono  <https://orcid.org/0000-0002-1056-6417>

Notes

1. Others, such as Boat Refugee Foundation, Greenpeace and the Swedish Sea Rescue Society, operated in the Aegean Sea in the Eastern Mediterranean.
2. Such statistics are always lower than the actual number of deaths, as many die without being counted.
3. For previous work on *mare nullius*, see Giuliani, 2016; Mainwaring, 2019; Pannell, 1996.
4. The group continued, however, to partner with SOS Méditerranée, first on the *Aquarius* and then on the *Ocean Viking*. In 2020, this partnership ended due to political differences and MSF launched a new partnership with Sea-Watch.
5. For example, on the US-Mexico border, providing water for travellers has similarly been criminalized as the borderzone desert has also been characterized as ‘empty’ (Associated Press, 2018; Doty, 2011). In the Mediterranean, a German humanitarian organization, the Cap Anamur, rescued 37 people in 2004. The Italian government refused them entry for two weeks, eventually allowing disembarkation but also arresting the ship’s captain and first officer and charging them with ‘illegal immigration’. They would only be acquitted five years later (Cuttitta, 2018: 637–638). In 2007, Italian officials similarly arrested seven Tunisian fishermen and charged them with smuggling after they rescued 44 people. Thus, even before NGOs operated at sea, Mediterranean states have tried to deter mariners from carrying out rescue (Albahari, 2016: 100–103).
6. Since then, some SAR ships have resume operations despite continued criminalization. We return to this in the conclusion.

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Ćetta Mainwaring is a Leverhulme early career research fellow in the School of Social and Political Sciences at the University of Glasgow. She holds a DPhil in International Relations from the University of Oxford. Her research focuses on migration, borders, and the Mediterranean. Her first, award-winning book, *At Europe's Edge: Migration and Crisis in the Mediterranean*, was published by Oxford University Press in 2019.

Daniela DeBono is associate professor at Malmö University, and Marie Curie COFAS Fellow at the Malmö Institute for the Studies of Migration, Diversity and Welfare. She was a Research Fellow for two years at the Robert Schuman Centre for Advanced Studies at the European University Institute (2016–2018). A doctoral graduate of the Sussex Centre for Migration Research at the University of Sussex, she has lead and conducted several long-term ethnographic projects looking into the migration-human rights nexus with a particular focus on hospitality, borders and the Mediterranean. Her work has been published by leading journals and publishers in the field.